

TO: Chairman and Members

DATE: November 18, 2010

**SUBJECT: SB 81 Local Youthful Offender Rehabilitative Facilities
Construction Financing Program
Reduction in 20 Percent Retention**

AGENDA ITEM: F

**ACTION: X
INFORMATION:**

RESOURCE PERSON: Charlene Aboytes

Summary:

This agenda item requests a reduction of the 20 percent retention amount withheld from the proceeds of lease-revenue financing as specified in the Title 15, 2007 Local Youthful Offender Rehabilitative Facilities Construction Financing regulations.

Background:

During previous state and federal jail construction grants administered by the Corrections Standards Authority (CSA), 20 percent retention of the final state dollars to be paid out on the project was withheld until facility construction was completed and the facility was staffed and occupied.

Based on that, Title 15, Section 1856, Disbursement of the Proceeds from the Lease-Revenue Bond Financing, states, "At such time as the balance from the proceeds of lease-revenue bonds to the participating county reaches twenty percent (20%), the Authority shall withhold that amount as security, to be released to the participating county upon compliance with all of the terms in the project delivery and construction agreement and conditions and requirements of law and regulation, including staffing and operating the facility within ninety (90) days of construction completion, receipt and approval of the final project audit report, and final construction inspection and approval by appropriate officials." The CSA Agreement, a state/county contractual document established for purposes of the state's financing of youthful offender rehabilitative facilities construction projects, further specifies, "The Withhold Amount shall be released upon satisfaction of all of the following conditions: (a) there has been Final Completion of the Project, (b) delivery by Participating County and acceptance by Agencies of the Final Audit and the Final Project Summary Report, (c) Participating County has staffed and operated the jail as required under Article 4(G), and (d) Participating County is not in breach of any provisions of this Agreement, the other Project Documents and Applicable Laws."

Due to budget constraints, AB 900 conditionally awarded counties requested a reduction in the 20 percent retention to mitigate "cash flow" borrowing by the counties to pay contractors, since the county will be paid in arrears by the state and the last 20 percent of the state dollars will be withheld. Supporting that change, Public Contract Code Section 10261 specifies that not less than 5 percent of the contract price can be withheld until final completion and acceptance of the project.

On May 6, 2010, the Corrections Standards Authority Board approved reducing the retention amount from 20 percent to 5 percent for county projects financed through the AB 900 2007 Local Jail Construction Funding Program. CSA staff is in the process of revising the SB 81 Local Youthful Offender Rehabilitative Facilities Construction Financing regulations and this was an opportune time to amend these regulations to reflect the reduction in retention amount. The regulation showing the change is provided in Attachment A.

CDCR Legal staff is available to answer any questions from the Board.

Recommendation/Action Needed:

Staff recommends the Board reduce the twenty percent retention to five percent as allowed by Public Contract Code Section 10261.